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No. 648

In the Supreme Court of the United States

October Term, 1943.

UNITED STATES OF AMERICA, *Petitioner,*

vs.

D. B. HELLARD, *Respondent.*

Answer to Petition for Writ of Certiorari.

GEORGE H. JENNINGS,
Sapulpa, Oklahoma,
Counsel for Respondent.

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IN THE SUPREME COURT OF THE UNITED STATES.
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UNITED STATES OF AMERICA, *Petitioner,*
vs.
D. B. HELLARD, *Respondent.*

ANSWER BRIEF TO THE PETITION FOR WRIT OF *CERTIORARI.*

Statement.

We respectfully assert that a consideration of the decision below clearly demonstrates that it is in entire harmony with the former decisions of the Circuit Court of Appeals for the Tenth Circuit, and of the Supreme Court of the State of Oklahoma, construing the enactment in question. It is also in accord with the former decisions of this Honorable Court, and is sustained by the legislative history of the Act, as well as by the construction given thereto by the Honorable Secretary of the Interior(1).

This enactment was first construed by the Supreme Court of the State of Oklahoma in *Salmon* v. *Johnson*, 78

(1)

Prior to the adoption of the Act of June 14, 1918, 40 Stat. 606, the courts were without jurisdiction to enter a binding decree determining heirship affecting restricted land. *Wolf* v. *Gills*, 96 Okl. 6, 219 Pac. 350; *Cowskochee* v. *Chapman*, 90 Okl. 121, 215 Pac. 759, *certiorari* denied 263 U. S. 713. They were likewise without jurisdiction to partition lands

Okl. 182, 189 Pac. 537, *certiorari* denied 254 U. S. 641, decided on April 6, 1920. The rule announced in that case has been followed without departure by the courts of the State of Oklahoma, as well as by the Federal courts. (See cases cited in footnote 1.)

This construction of the statute has governed the transfers of real estate for more than twenty years, and it has become a rule of property. It should not be overturned even though such construction were open to doubt. *Truskett* v. *Closser*, 236 U. S. 223; *United States* v. *Lee*, (C. C. A. 10), 108 F. (2d) 936.

Wherefore, respondent most respectfully prays that the petition for writ of *certiorari* be dismissed, or in the alternative, denied.

GEORGE H. JENNINGS,
Sapulpa, Oklahoma,
Counsel for Respondent.

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where an interest was acquired by inheritance by full-blood Indians. *Hoodenpyl* v. *Champion*, 71 Okl. 270, 177 Pac. 369; *Salmon* v. *Johnson*, 78 Okl. 182, 189 Pac. 537, *certiorari* denied 254 U. S. 641.

The purpose of Section 1 of the Act was to vest the courts of Oklahoma with jurisdiction to conclusively determine the heirship of deceased allottees (*State, ex rel. Miller* v. *Huser*, 76 Okl. 130, 184 Pac. 113; *In re Fulsom's Estate*, 141 Okl. 300, 285 Pac. 13; *Pitman* v. *Commissioners of Internal Revenue*, (C. C. A. 10) 64 F. (2d) 740; *Roberts* v. *Anderson*, (C. C. A. 10) 66 F. (2d) 874); and with jurisdiction to order and direct the partition of the lands acquired by full-blood Indian heirs. *Salmon* v. *Johnson*, 78 Okl. 182, 189 Pac. 537, *certiorari* denied 254 U. S. 641; *United States* v. *Bond*, (C. C. A. 10) 108 F. (2d) 504; *United States* v. *Watashe*, (C. C. A. 10) 117 F. (2d) 947.

Accord: S. Rep. No. 330, 65th Congress, 2nd Session; Cohen, Handbook of Federal Indian Law (1942), pp. 379 (footnote 178), 446; Memo. Sol. I. D. September 21, 1935.